

MAY 11 2011

NOT FOR PUBLICATION

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUITUNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. AZ-10-1147-MkPaJu
)
GLOBAL AIRCRAFT SOLUTIONS,) Bk. No. 09-01655
INC.,)
) Adv. No. 09-00609
Debtor.)
LEADING EDGE GROUP, LLC,)
Appellant,)
v.) **M E M O R A N D U M**
HAMILTON AEROSPACE)
TECHNOLOGIES, INC.; FRANK T.)
HUNDLEY, Chapter 11 Trustee,)
Appellees.)

Argued and Submitted on February 17, 2011
at Phoenix, Arizona

Filed - May 11, 2011

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable James M. Marlar, Chief Bankruptcy Judge, Presiding

Appearances: C. Randall Stone, Esq., Stone Law Firm, PLC,
argued for Appellant Leading Edge Group, LLC
Anthony W. Austin, Esq., Lewis and Roca, LLP,
argued on behalf of Appellee Frank T. Hundley,
Chapter 11 Trustee
Robert M. Charles, Jr., Esq., Lewis and Roca, LLP
argued on behalf of Appellee Hamilton Aerospace
Technologies, Inc.

Before: MARKELL, PAPPAS and JURY, Bankruptcy Judges.

*This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

1 Leading Edge Group, LLC ("LEG") appeals the bankruptcy
2 court's judgment in favor of the bankruptcy trustee for Hamilton
3 Aerospace Technologies, Inc.¹ ("HAT") on HAT's complaint seeking
4 unpaid storage fees and to foreclose certain liens HAT held on
5 property owned by LEG and either stored at HAT's facilities or
6 held as security by HAT.² LEG also appeals the order denying its
7 motion for reconsideration. We AFFIRM both orders.

8 I. FACTS

9 A. Storage Fees, Settlement, and Garageman's Lien Sale

10 This controversy centers on a Boeing 727-200 Airframe, Tail
11 No. N8881z, MSN 21578 ("Airframe"), and a Universal UNS-1C
12 Navigation Unit ("Navigation Unit"). The Airframe was stored at
13 HAT's facility in Tucson, Arizona prior to LEG's acquisition of
14 the Airframe, and it continued to be stored there after LEG
15 purchased it on or around June 1, 2006. It does not appear that
16 LEG ever took physical delivery of the Airframe after its
17 purchase. When HAT became aware that LEG was the owner of the
18 Airframe, it communicated via email to LEG that it would charge
19 LEG \$4,500 per month to store the Airframe at HAT's facility.
20 HAT also included a proposed storage contract in the email;

21
22 ¹From a review of the bankruptcy court's docket, it appears
23 that Global Aircraft Solutions, Inc., Hamilton Aerospace
24 Technologies, Inc., World Jet Corporation, and Hamilton Aerospace
25 Mexico S.A. de C.V. are all affiliates of one another. The
bankruptcy court authorized the joint administration of these
cases on February 2, 2009.

26 ²Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all Rule references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. All Civil Rule references are to the
Federal Rules of Civil Procedure.

1 however, LEG did not sign the document. Id. Nevertheless, LEG
2 neither removed the Airframe from HAT's facility nor objected to
3 the \$4,500 monthly charge.

4 LEG did not make sufficient payments for the continued
5 storage of the Airframe, and, on November 7, 2007, HAT sent LEG a
6 demand letter in which it stated its intention to sell the
7 Airframe at public auction to satisfy the unpaid storage fees.

8 On December 14, 2007, the parties met to discuss a
9 resolution of the storage fee issue. During the course of that
10 meeting, the parties agreed that the amount owed, calculated at
11 \$81,000 (or \$4,500 per month for 18 months), would be discounted,
12 to a total cost of \$53,095 covering the period beginning with
13 LEG's acquisition of the Airframe and ending on December 31,
14 2007. The amount due was to be paid in two installments, the
15 first payment due on December 28, 2007 in the amount of \$25,000
16 and the balance due by January 31, 2008. Per this agreement, the
17 monthly rate for storage would increase to \$4,500 per month on
18 January 1, 2008.

19 As consideration for the reduction in payment, HAT asked
20 for, and was granted, two additional covenants in the agreement:
21 (1) If LEG defaulted on either of the two payments, LEG would
22 lose the discount, and the full \$81,000 (calculated at \$4,500 per
23 month) for storage would be due for the entire storage period;
24 and (2) LEG was required to physically deliver the Navigation
25 Unit to HAT for HAT to hold as collateral for LEG's performance
26 under the settlement agreement.

27 HAT sent LEG a confirmation letter, to which LEG responded
28 on December 21, 2007. In its response, LEG attempted to reserve

1 property rights in the Navigation Unit, unilaterally attempted to
2 remove the expiration date of the parking discount, and stated
3 its intent to mail a follow-up letter back to HAT. It does not
4 appear that any such follow-up letter was ever mailed.
5 Regardless, it appears that both HAT and LEG considered the
6 agreement valid prior to LEG's attempted unilateral modification,
7 as LEG made the first payment of \$25,000 contemplated by the
8 agreement on or around January 3, 2008, which HAT accepted. LEG
9 had also delivered the Navigation Unit to HAT. LEG stated its
10 intention to make the final payment of \$28,095 by February 21,
11 2008, and then retrieve the Navigation Unit it had previously
12 delivered to HAT. This payment, however, was never made.

13 After LEG failed to make the final payment, HAT considered
14 the agreement void according to its terms, provided notice to LEG
15 of its intent to sell both the Airframe and the Navigation Unit,
16 and then did, in fact, hold a public auction of both these items
17 on August 6, 2009. The Trustee entered a credit bid of \$85,000
18 for the Airframe and the Navigation Unit. There were no other
19 bidders.

20 **B. The Adversary Proceeding in the Bankruptcy Court**

21 The Trustee, on behalf of HAT, filed an adversary complaint
22 against LEG on June 3, 2009. In the complaint, the Trustee
23 asserted claims for breach of contract, quantum meruit, and to
24 foreclose the mechanic's lien. HAT also sought appropriate
25 attorneys' fees. LEG filed an answer and asserted a counterclaim
26 with respect to the Navigation Unit. LEG also sought appropriate
27 attorneys' fees.

28 After HAT had completed its sale of the Airframe and the

1 Navigation Unit, LEG filed a motion with the bankruptcy court to
2 set aside the sale and alleged various deficiencies of the
3 completed sale.

4 HAT filed a response to this motion and alleged that it
5 needed neither LEG's consent nor the bankruptcy court's approval
6 before it conducted the sale.³ HAT further alleged that the sale
7 of the Airframe and the Navigation Unit was, thus, proper under
8 Arizona law.

9 In relevant part, after trial the bankruptcy court made the
10 following findings in a memorandum decision:⁴

- 11 • LEG had granted HAT a security interest in the Navigation
12 Unit, to secure payment of the storage charges, as
13 envisioned by the settlement reached between the parties.
- 14 • The security agreement was confirmed by the follow-up letter
15 sent by HAT, and LEG's contention that it retained title to
16 the Navigation Unit until it was sold was "not inconsistent
17 with the grant of a security interest."
- 18 • HAT's security interest in the Navigation Unit was perfected
19 when LEG delivered possession of the Navigation Unit to HAT.
- 20 • A preponderance of the evidence "supports the legal
21 validity" of the foreclosure sale, completed under Arizona
22 law that grants liens to garagemen, of the Airframe and
23 Navigation Unit.

24
25 ³Indeed, during oral argument, counsel for Appellee Frank T.
26 Hundley, Chapter 11 Trustee, indicated to this Panel that the
27 purpose for filing the adversary proceeding was to preserve a
potential deficiency claim against LEG.

28 ⁴Unless the recited finding is enclosed in quotation marks,
this recitation paraphrases the bankruptcy court's language.

- 1 • The sale of the Airframe and Navigation Unit was completed
- 2 in a commercially reasonable manner.
- 3 • An implied contract existed for the payment of \$4,500 in
- 4 monthly storage fees by LEG to HAT.
- 5 • If an implied contract did not exist, an express contract to
- 6 pay \$4,500 per month in storage fees existed between HAT and
- 7 LEG.
- 8 • HAT was entitled to reasonable attorneys' fees and costs
- 9 under Arizona law.

10 After entry of the memorandum decision on January 26, 2010,
11 LEG filed a motion for reconsideration on March 4, 2010. The
12 court treated this as a motion under Civil Rule 60, held that the
13 issue raised by the motion for reconsideration was not "within
14 the scope of the parties' joint pretrial statement" and presented
15 "an entirely new issue not otherwise raised in the context" of
16 the adversary proceeding. The bankruptcy court accordingly
17 denied the motion in a separate memorandum decision.

18 The bankruptcy court entered judgment in favor of HAT on
19 April 16, 2010. The judgment awarded HAT:

- 20 • Unpaid storage fees in the amount of \$59,100.00, with
- 21 statutory interest until paid, at the rate of 10% per annum.
- 22 • Attorneys' fees in the amount of \$23,143.50 and costs in the
- 23 amount of \$2,545.26, with statutory interest until paid, at
- 24 the rate of 10% per annum.

25 The judgment further held that:

- 26 • HAT's foreclosure of the storage lien on the Airframe was
- 27 valid.
- 28 • The Uniform Commercial Code lien on the Navigation Unit was

1 valid, as was the foreclosure of that lien.

2 The court's memorandum decision explicitly stated that any
3 appeal should be taken from the subsequent judgment and not from
4 the memorandum decision itself. Therefore, LEG's appeal from the
5 judgment, filed April 29, 2010, was timely.

6 **II. JURISDICTION**

7 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
8 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.
9 § 158(a)(1).

10 **III. ISSUES**

- 11 1. Whether the bankruptcy court's determination that the
12 parties entered into a contract regarding the amount of rent
13 due to HAT for storage of the Airframe was reversible error.
- 14 2. Whether the bankruptcy court's determination that the
15 storage lien foreclosure procedure complied with Arizona law
16 was reversible error.
- 17 3. Whether the bankruptcy court's determination that HAT had a
18 valid lien on the Navigation Unit was reversible error.
- 19 4. Whether the bankruptcy court's denial of Defendant's Motion
20 for Reconsideration was an abuse of discretion.
- 21 5. Whether the bankruptcy court's decision to not hold a
22 hearing and not issue a ruling prior to the sale of the
23 Airframe was an abuse of discretion.
- 24 6. Whether HAT, as appellee, is entitled to an award of
25 attorneys' fees incurred as a result of the present appeal.

26 **IV. STANDARDS OF REVIEW**

27 We review the bankruptcy court's findings of fact for clear
28 error. Oney v. Weinberg (In re Weinberg), 410 B.R. 19, 28 (9th

1 Cir. BAP 2009); Rule 8013. Clear error exists when the court's
2 findings are "(1) 'illogical,' (2) 'implausible,' or (3) without
3 'support in inferences that may be drawn from the facts in the
4 record.'" U.S. v. Hinkson, 585 F.3d 1247, 1263 (9th Cir. 2009)
5 (en banc). "'Where there are two permissible views of the
6 evidence, the factfinder's choice between them cannot be clearly
7 erroneous.'" Donald v. Curry (In re Donald), 328 B.R. 192, 203
8 (9th Cir. BAP 2005) (quoting Anderson v. City of Bessemer City,
9 N.C., 470 U.S. 564, 574 (1985)); Rifino v. United States (In re
10 Rifino), 245 F.3d 1083, 1086-87 (9th Cir. 2001). Additionally, a
11 clearly erroneous finding of fact does not always justify
12 reversal; we must ignore harmless error. Litton Loan Serv'g, LP
13 v. Garvida (In re Garvida), 347 B.R. 697, 704 (9th Cir. BAP 2006)
14 (citing 28 U.S.C. § 2111, Rule 9005, Civil Rule 61, and Donald,
15 328 B.R. at 203-04).

16 We review a bankruptcy court's legal conclusions, including
17 its interpretation of the Bankruptcy Code and state law, de novo.
18 Roberts v. Erhard (In re Roberts), 331 B.R. 876, 880 (9th Cir.
19 BAP 2005), aff'd 241 Fed. Appx. 420 (9th Cir. 2007). De novo
20 review requires that the matter be considered anew, as if it had
21 not been heard before, and as if no decision had yet been
22 rendered. United States v. Silverman, 861 F.2d 571, 576 (9th
23 Cir. 1988). When this Panel undertakes de novo review, the case
24 is viewed from the same position as it was in the bankruptcy
25 court. See Ka Makani 'O Kohala Ohana Inc. v. Water Supply,
26 295 F.3d 955, 959 (9th Cir. 2002).

27 Relevant to the case now before the Panel, determinations of
28 whether a foreclosure proceeding was legally conducted pursuant

1 to state law are to be reviewed de novo. Lindsay v. Beneficial
2 Reins. Co., 59 F.3d 942, 949 (9th Cir. 1995).

3 The decision of whether to hold a hearing on a given matter
4 is "within the sound discretion of the [bankruptcy] court."
5 Murphy v. Schneider Nat'l, Inc., 362 F.3d 1133, 1139 (9th Cir.
6 2004). Therefore, we review a bankruptcy court's decision of
7 whether to hold a hearing "for an abuse of discretion." Zurich
8 Am. Co. V. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.),
9 503 F.3d 933, 939-40 (9th Cir. 2007).

10 We review the bankruptcy court's denial of a motion for
11 reconsideration under Civil Rule 60 for abuse of discretion.
12 Weiner v. Perry (In re Weiner), 161 F.3d 1216, 1218 (9th Cir.
13 1998). Under the abuse of discretion standard, we first
14 "determine de novo whether the [bankruptcy] court identified the
15 correct legal rule to apply to the relief requested." Hinkson,
16 585 F.3d at 1262. If the bankruptcy court identified the correct
17 legal rule, we then determine under the clearly erroneous
18 standard whether its factual findings and its application of the
19 facts to the relevant law were: "(1) illogical, (2) implausible,
20 or (3) without support in inferences that may be drawn from the
21 facts in the record." Id. (internal quotation marks omitted).

22 V. DISCUSSION

23 A. Existence of a Valid Contract

24 This Panel agrees with the bankruptcy court that Arizona law
25 governs this question. In Arizona, a valid contract is formed
26 when there has been "an offer, acceptance, consideration, a
27 sufficiently specific statement of the parties obligations, and
28 mutual assent." Muchesko v. Muchesko, 955 P.2d 21, 24 (Ariz. Ct.

1 App. 1997) (citing Savoca Masonry Co., Inc. v. Homes & Son
2 Constr. Co., 542 P.2d 817, 819 (Ariz. 1975). Manifestation of
3 acceptance can be either express or implied; however, "[t]here
4 can be no implied contract where there is an express contract
5 between the parties in reference to the same subject matter."
6 Chanay v. Chittenden, 563 P.2d 287, 290 (Ariz. 1977).

7 This Panel further agrees with the bankruptcy court that the
8 existence and specific terms of an implied contract "may be
9 inferred from the statements and conduct of the parties" thereto.
10 Beaudry v. Ins. Co. of the W., 50 P.3d 836, 839 (Ariz. Ct. App.
11 2002) (stating that "terms of a contract may be expressly stated
12 or may be inferred from the conduct of the parties").
13 Furthermore, under Arizona law the "determination of the parties'
14 intent must be based on objective evidence, not the hidden intent
15 of the parties." Tabler v. Indus. Comm'n of Ariz., 47 P.3d 1156,
16 1159 (Ariz. Ct. App. 2002).

17 The bankruptcy court was also correct as to the law it
18 applied with regard to express contracts. In Arizona, "[a]n
19 express contract is ordinarily thought of as an actual agreement
20 reached by parties who have openly uttered or declared the terms
21 thereof at the time of making it, either orally or in writing."
22 Alexander v. O'Neil, 267 P.2d 730, 734 (Ariz. 1954). "[A]n oral
23 settlement agreement may bind the parties in contract, even
24 though their written agreement is not formally executed, as long
25 as it is clear that the parties intended to be so bound."
26 Tabler, 47 P.3d at 1159 (citing AROK Constr. Co. v. Indian
27 Constr. Serv., 848 P.2d 870, 876 (Ariz. Ct. App. 1993);
28 Restatement (Second) of Contracts § 27 (1981)).

1 Because the bankruptcy court correctly identified and
2 applied to this issue the appropriate legal principles, all that
3 remains for this Panel to review is whether the bankruptcy
4 court's factual findings supporting the legal conclusion that an
5 implied or express contract existed were clearly erroneous.

6 The bankruptcy court's determination that an implied
7 contract existed is amply supported by the record, as discussed
8 above. The bankruptcy court specifically found that LEG was
9 "advised early and often" that HAT charged \$4,500 per month for
10 storage of the Airframe. LEG failed to object, and failed to
11 move the Airframe to an alternative storage location. When
12 objectively reviewing the conduct of the parties, this Panel is
13 left with no other conclusion than that LEG entered into an
14 implied contract with HAT, at the rate of \$4,500 per month, for
15 storage of the Airframe. LEG's "inaction created an implied
16 agreement to pay for the known storage fees." As the
17 determination that an implied contract existed between HAT and
18 LEG is well supported by the evidence presented, it follows
19 naturally that the bankruptcy court's determination was not
20 clearly erroneous.⁵

21
22 ⁵Further support for this conclusion may be found in the
23 Restatement (Second) of Contracts. "Where an offeree fails to
24 reply to an offer, his silence and inaction operate as an
25 acceptance" when "an offeree takes the benefit of the offered
26 services with reasonable opportunity to reject them and reason to
27 know that they were offered with the expectation of
28 compensation." Restatement (Second) of Contracts § 69 (1981).
Here, LEG's silence operated as acceptance because it took the
benefit of the storage service offered by HAT, while being
accorded a more than reasonable opportunity to reject them. LEG
knew that the services were offered with the expectation of

(continued...)

1 The bankruptcy court held, and this Panel affirms, that the
2 parties entered into an implied contract when LEG became aware of
3 the storage fee charged and then allowed, without objection, the
4 Airframe to remain at HAT's storage facility.

5 The subsequent settlement agreement either modified the
6 preexisting implied agreement or created a new and separate
7 agreement. See Chanay, 563 P.2d at 290 (stating that where there
8 is an implied contract, there can be no express contract).
9 However, even if no implied contract existed, the settlement
10 agreement between the parties, by its terms, would have served to
11 create an express contract. This Panel finds that the bankruptcy
12 court's alternative determination that an express contract arose
13 by virtue of the settlement agreement is well supported by the
14 evidence presented, and, thus, is not clearly erroneous.

15 **B. Foreclosure of Storage Lien**

16 Arizona law grants "proprietors of garages and service
17 stations . . . a lien upon motor vehicles of every kind and
18 aircraft . . . for labor, materials, supplies, and storage for
19 the amount of charges, when the amount of charges is agreed to by
20 the proprietor and the owner." Ariz. Rev. Stat. § 33-1022(A)
21 ("Garagemen's Statute"). If the owner of the property upon which
22 the garageman has a lien fails to pay charges for twenty days
23 after they come due, the lienholder "may notify the owner . . .
24 to pay the charges." Ariz. Rev. Stat. § 33-1023. If the
25 property owner's "residence is not in the county where the
26

27 ⁵(...continued)
28 compensation due to HAT's explicit communication to LEG of the
storage fee to be charged.

1 property is located," the lienholder need not give notice of
2 default before then proceeding to sell the property; in all other
3 cases notice of default and ten days to cure is required. Id.
4 The lienholder is in all cases required to provide five days
5 notice of the public auction, if the property owner's location is
6 known or can be ascertained. Id.

7 As stated above, the bankruptcy court correctly determined
8 that an agreement between HAT and LEG existed. Therefore, the
9 amount to be charged for storage was the amount "agreed to by the
10 proprietor and the owner" of the property in that contract. Fees
11 for storage of aircraft are specifically included in the statute.
12 The relationship between HAT and LEG is firmly within the scope
13 of the statute. Because the relationship between the parties is
14 governed by the Garagemen's Statute, the conclusion follows that
15 under that statute, a lien to secure payment of charges owed from
16 LEG to HAT attached to the Airframe at the time the agreement was
17 entered into.

18 The record supports the bankruptcy court's finding that HAT
19 complied with the other requirements of Arizona's Garagemen's
20 Statute. HAT provided notice of default and intention to sell to
21 LEG on November 3, 2008. Again, on July 17, 2009, the Bankruptcy
22 Trustee, on behalf of HAT, gave notice to LEG of its default and
23 provided it twenty days to cure. This notice further stated that
24 if the amount owed was not paid within the time to cure, a public
25 auction of both the Airframe and the Navigation Unit would be
26 held on August 6, 2009, well over the minimum five-day notice of
27 sale required by the Garagemen's Statute.

28 Nothing in the Garagemen's Statute requires court approval

1 before the garageman may foreclose the statutory lien, hold an
2 auction, and apply the proceeds to collateral. Additionally,
3 HAT's trustee complied with all of the applicable requirements of
4 the pertinent statutes. Having reviewed this issue of law de
5 novo, we agree with and affirm the bankruptcy court's conclusion,
6 that both the foreclosure of the storage lien on the Airframe and
7 the public auction of the same were proper under Arizona law.

8 **C. Existence of Valid Lien on Navigation Unit**

9 The bankruptcy court found that possession of the Navigation
10 Unit was given to HAT by LEG as collateral to secure its
11 performance under the settlement agreement.⁶ This Panel agrees
12 with the bankruptcy court's characterization.⁷ By virtue of the
13 settlement agreement reached between the parties, LEG delivered
14 the Navigation Unit to HAT as security for its performance of
15 LEG's obligations under that agreement.

16 Under Arizona law, security interests of this type are
17 governed by Article 9 of Arizona's Uniform Commercial Code.
18 Specifically, a security interest is created when: (1) value is
19 given, (2) the debtor has rights in the property offered as
20 collateral or the power to transfer rights in the collateral to a
21

22
23 ⁶It may also fairly be said that the pledge of the
24 Navigation Unit as collateral was the consideration for the
25 agreement. HAT may have agreed to accept less than it was
contractually owed for storage fees in consideration for the
collateral securing payment that it received.

26 ⁷During argument before this Panel, counsel for LEG
27 characterized the status of the Navigation Unit, when in HAT's
28 possession, as contingent security. While counsel for LEG did
not find this characterization odd, the Panel does, and
accordingly declines to adopt it.

1 secured party, and (3) the debtor either has authenticated a
2 security agreement that provides a description of the collateral
3 or the collateral is in the possession of the secured party.
4 Ariz. Rev. Stat. § 47-9203. Neither party alleges that an
5 authenticated, and thus signed, security agreement was entered
6 into between the parties. However, LEG delivered possession of
7 the Navigation Unit to HAT. Upon this delivery, HAT had a valid
8 security interest in the Navigation Unit, and its security
9 interest was perfected by possession of the collateral. Id.;
10 Ariz. Rev. Stat. § 47-9313. While LEG continued to maintain its
11 ownership interest in the Navigation Unit, HAT also had a
12 security interest in the Navigation Unit, beginning when
13 possession was delivered to HAT and continuing until the auction
14 of the property. HAT was not required to file a financing
15 statement or any other statement to maintain its perfection or
16 priority. Ariz. Rev. Stat. §§ 47-9310, 47-9313.

17 As a secured party, HAT had the option of selling its
18 collateral, the Navigation Unit, when LEG defaulted on the
19 settlement agreement, provided that its sale of the collateral
20 complied with Arizona law. Following LEG's default, HAT was
21 authorized to "sell, lease, license or otherwise dispose of any
22 or all of the collateral in its present condition" Ariz.
23 Rev. Stat. § 47-9610. "Every aspect of [the] disposition,
24 including the method, manner, time, place, and other terms, must
25 [have] been commercially reasonable." Id. HAT disposed of this
26 collateral via public auction, held after LEG received proper
27 notice. The bankruptcy court determined, as do we, that the
28 method of sale employed by HAT was commercially reasonable under

1 the circumstances.

2 After considering de novo whether HAT held a valid security
3 interest in the Navigation Unit under Arizona law, and whether it
4 sold its collateral in compliance with Arizona law, this Panel
5 concludes that it did.

6 **D. Motion for Reconsideration**

7 The bankruptcy court applied the correct standard under
8 Civil Rule 60 in evaluating LEG's Motion for Reconsideration, and
9 we see no error in the bankruptcy court's application of that
10 standard. Accordingly, the bankruptcy court did not abuse its
11 discretion when it denied LEG's Motion for Reconsideration.

12 **E. Hearing Requirement**

13 As discussed above, HAT's lien on the Airframe arose by
14 operation of statute and the parties' agreement. The security
15 interest in the Navigation Unit arose under the settlement
16 agreement reached between the parties and was perfected upon
17 delivery of the Navigation Unit to HAT by LEG. Also as discussed
18 above, neither the Garagemen's Statute nor the Uniform Commercial
19 Code require an in-court hearing or a ruling before HAT could
20 properly dispose of the Airframe and Navigation Unit. In its
21 Opening Brief for the present appeal, LEG argues that because
22 there was no agreement, HAT was required to obtain a judgment or
23 court order prior to the public auction. As discussed above,
24 there was an agreement, and HAT's sale was properly conducted as
25 to both the Airframe and the Navigation Unit. Therefore, the
26 bankruptcy court was not required to hold a hearing before the
27 sale in question took place, and the failure to do so does not
28 constitute reversible error.

1 **F. Attorneys' Fees on Appeal**

2 Arizona law provides that "[i]n any contested action arising
3 out of a contract, express or implied, the court may award the
4 successful party reasonable attorney fees." Ariz. Rev. Stat.
5 § 12-341.01. Under this statute, "the prevailing party is also
6 entitled to fees on appeal." In re Holiday Mobile Home Resorts,
7 803 F.2d 977, 979 (9th Cir. 1986) (citing Wenk v. Horizon Moving
8 and Storage Co., 639 P.2d 321, 323 (Ariz. 1982)). When exercising
9 discretion to award fees, courts are to consider six pertinent
10 factors: (1) the merits of the claim or defense presented by the
11 unsuccessful party, (2) the novelty of the legal question
12 presented and whether such a claim has previously been decided in
13 the jurisdiction, (3) whether the successful party prevailed with
14 respect to all claims, (4) whether an award of fees would
15 discourage other parties with tenable claims from litigating
16 legitimate contract issues, (5) whether litigation could have
17 been avoided such that the successful party's efforts were
18 superfluous, and (6) whether awarding fees would impose an
19 extreme hardship on the unsuccessful party. Associated Indem.
20 Corp. v. Warner, 694 P.2d 1181, 1184 (Ariz. 1985).

21 The bankruptcy court awarded attorneys' fees, and LEG did
22 not appeal this award. The Trustee has similarly requested an
23 award of fees on appeal. After considering the above factors, we
24 conclude that attorneys' fees for the instant appeal are
25 appropriate. However, in recognition of the bankruptcy court's
26 essential competency in this area and its familiarity with the
27 parties, we remand to the bankruptcy court the specific
28 determination of the amount of attorneys' fees to be awarded,

1 such fees to be awarded consistent with the above enumerated
2 factors.

3 **VI. CONCLUSION**

4 For all of the reasons set forth above, the judgment of the
5 bankruptcy court and its denial of LEG's Civil Rule 60 motion are
6 each AFFIRMED. Furthermore, the Panel REMANDS to the bankruptcy
7 court the determination of reasonable attorneys' fees for this
8 appeal under Ariz. Rev. Stat. § 12-341.01(A).